CASE SUMMARY

Complaint against Housing Department for delay in processing a report on using a forged document to apply for public housing

The Complaint

The complainant reported to the Housing Department ("HD") in June 2001 that its ex-employee Mr A had forged an Employer Certificate to apply for a public rental housing unit. Due to delay by HD staff, the case was time-barred from prosecution.

Housing Ordinance

2. According to the Housing Ordinance, proceedings against an offence of giving a false statement when applying for a public rental housing unit may be brought at any time within six years after commission of the offence or within one year after the discovery thereof by an authorized officer, whichever period expires first.

Normal Processing Procedures

3. When the Prosecutions Section of HD receives such a case, the Housing Manager/Prosecutions will first confirm the date of discovery and determine the statutory time-barred date ("STBD") as stipulated by the Ordinance. The case will then be assigned to an Assistant Housing Manager/Prosecutions, who should check the STBD as a precaution before passing the case on to a Housing Officer for processing.

4. The established practice is for Housing Officers to process cases with STBDs chronologically. They should start screening such cases at least four months before the STBDs, completing with recommendations preferably one month before the STBDs. The aim is to allow time for senior officers to decide whether or not to prosecute.

Case under Complaint

5. HD's Complaint and Enquiry Section received this complaint on 8 June 2001 and passed it to the Applications Section on 13 June 2001. The Applications Section asked the complainant to provide more information.

6. On 6 August 2001, after receiving a letter and a new Employer Certificate both dated 17 July 2001 from the complainant, the Applications Section referred the case to the Prosecutions Section.

7. An Assistant Housing Manager/Prosecutions Mr B was doubling-up as Housing Manager/Prosecutions at that time. He took 17 July 2001, the date of the supplementary letter and new Employer Certificate, as the date of discovery. The STBD thus fell on 16 July 2002, a year later. As Mr B was doing both the jobs of Housing Manager and Assistant Housing Manager/Prosecutions, the STBD that he set was not checked by another officer.

8. The case was passed to Housing Officer/Prosecutions Ms C. When she started action and requested additional information from the Applications Section on 25 March 2002, it was just under four months from the STBD set by Mr B.

9. After receiving the requested information, Ms C reported on 11 July 2002 to her new supervisor, Acting Housing Manager/Prosecutions Mr D who had taken over from Mr B, and recommended prosecution against Mr A for making a false statement when applying for a public rental housing unit. This was just five days before the STBD of 16 July 2002, not the preferred minimum of one month.

10. On examining the case, Mr D considered that 13 June 2001, the date the Applications Section received the referral from the Complaint and Enquiry Section, should be the date of discovery. The STBD should, therefore, fall on 12 June 2002 instead of 16 July 2002. In this light, by the time he received the case from Ms C on 11 July 2002, prosecution against Mr A in accordance with the Housing Ordinance was already time-barred.

11. Subsequent investigation into the case by HD revealed that Mr A had not taken up any public rental housing unit. Instead, he had used his eligibility to purchase a flat under the "Buy or Rent Option Scheme". HD's investigation continues.

Our Comments

12. It is evident that HD had handled the case most unsatisfactorily, resulting in an obvious offence being time-barred. The mistake was due to:

(a) Mr B setting a wrong STBD;

(b) the failure of the mechanism for checking the STBD due to Mr B doubling-up as Housing Manager/Prosecutions;

(c) Ms C submitting the case for prosecution just days before the STBD; and

(d) the failure of Ms C's senior to ensure timely submission of the case.

13. This Office considered the complaint **substantiated**.

Recommendations

14. This Office recommended that HD:

(a) issue a letter of apology to the complainant for inefficiency in processing the case;

(b) consider action with regard to the officers concerned;

(c) review the procedures and practices for processing prosecution cases (particularly those with STBDs), to give firm and clear guidelines to staff so as to avoid similar mistakes and to

improve efficiency; and

(d) review the records for all cases time-barred to identify whether any officer should be held accountable and whether other systemic improvement measures are called for.

Comments from Housing Department

15. HD accepted the findings and recommendations on the case. A letter of apology was issued to the complainant. As regards recommendations (b) to (d), HD will report to this Office in due course on their implementation.

Office of the Ombudsman
January 2004